

(S)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JAMES DeBARBARA,

Plaintiff,

v.

EDWIN BOWEN,

Defendant.

Case No. 04 C 7898

Hon. Harry D. Leinenweber

MEMORANDUM OPINION AND ORDER

On June 28, 2005, Petitioner filed a Notice of Appeal with the Seventh Circuit concerning the Court's June 16, 2005 Order dismissing his Habeas Petition as time-barred. The Seventh Circuit notified the Court that it must either issue a Certificate of Appealability (the "COA") or state the reasons for denial.

A district court may issue a COA "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where the court has rejected a petitioner's constitutional claims "on procedural grounds without reaching the prisoner's underlying constitutional claim[s], a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 120 S.Ct. 1595, 1598-99 (2000).

Petitioner is seeking to appeal the Court's Order granting Respondent's Motion to Dismiss his Habeas Petition as time-barred. As previously discussed, using the most favorable tolling calculation to Petitioner and resolving any date uncertainties or discrepancies in his favor, Petitioner filed his Habeas Petition more than 500 days from the final date of his state judgment. No jurist of reason would find it debatable that the one-year statute of limitations expired long before he filed the Habeas Petition.

Accordingly, for the reasons stated herein, the COA is **DENIED**.

IT IS SO ORDERED.



Harry D. Leinenweber, Judge
United States District Court

Dated:

